

RECEIVED  
FEDERAL ELECTION  
COMMISSION

Federal Elections Commission  
ATTN: Kim Collins  
999 E. Street, N.W.  
Washington, D.C. 20463

2010 FEB 17 PM 2:45

OFFICE OF GENERAL  
COUNSEL

Re: MUR 6247

Dear Ms. Collins,

I feel that I should first point out that Mr. Vickers Cunningham is an ardent supporter of my opponent in the March 2<sup>nd</sup> Republican Primary, U.S. Rep. Pete Sessions (R-TX 32). At the 2009 Dallas County Republican Christmas Party, Mr. Cunningham and I exchanged words and he personally threatened me, stating, "I'm going to do everything in my power to ensure that you *never* get elected to anything." I do have to admit, at least you know everything truly is bigger down in Texas, including our threats!

Mr. Cunningham points out that as a writer for www.examiner.com I am paid a "very competitive rate." That rate equates to about one cent per page view, or for each time an individual reader opens one of my articles to read. While this rate may be competitive with other news providers such as the *Dallas Morning News*, *examiner.com* draws nowhere near the same web traffic that the *DMN* or other news agencies do. Therefore, my earnings are hardly relevant.

As for his complaint that my agreement with Examiner.com excludes any items being published soliciting personal gain, I think that is an interesting point, seeing as how it originates with my opponent's campaign. Perhaps there are some matters of personal gain that need to be investigated there? However, if Examiner.com has raised no complaints with me personally as to the content of my writing, I hardly think my opponent need concern himself with my obligations to my employer. And if he takes such great interest in the content of my articles, it would be nice if he would answer for himself on the matters I have raised continuously regarding his own record.

As to the event announcement posted on November 3, 2008, this was an exact reproduction of the email that I sent out to Precinct Chairs in the Dallas County Republican Party for the event in question November 9<sup>th</sup>. I treated this announcement as just that—an announcement of an upcoming event. My position as Dallas County *Republican Examiner* holds that I should be posting content of interest to a *Republican* audience. And while Mr. Cunningham is offended that I should post content of an *anti-incumbent, anti-establishment*, Republican nature, I will assure you that there are those in the political spectrum who take great interest in such content.

I will point out, also, that the form the article in question took follows that of previous event announcements that I have posted previously for fundraisers for other politicians and organizations. Mr. Cunningham's concerns are unfounded. It is my duty to Examiner.com to provide content that is unavailable to other news organizations, so I saw no need to send out such an announcement to other organizations without first

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posting it on examiner.com. However, I also notified Mr. Harvey Kronberg immediately after my posting. Mr. Kronberg runs the Quorum Report news service in Texas and ran a headline announcing my candidacy from the same article. So at least one other organization agreed that my content was, in fact, newsworthy. I was also contacted separately by no fewer than three other news organizations seeking to interview me as a candidate. So I believe it was my duty as an employee of examiner.com to offer said content to my employer's readers first before any other.

As for press exemption, the nifty little statement I included about "not subject to reporting requirements under State law" was completely irrelevant as it turns out. As it happens, the Texas Ethics Commission does not want *any* paperwork filed with it in a Federal race. So even my willingness to subscribe to Texas' Fair Campaign Practices Form is irrelevant and unnecessary. The Ethics Commission said, in fact, that if I sent this in to them that they would return it to me unprocessed.

Mr. Cunningham's concern is that my re-posting an email for an announcement of a fundraiser and candidacy does not constitute a legitimate press function. As I have already shown, I have previously reposted such announcements for others without their requesting this, and other press organizations ran the same as well as contacted me for additional comment. I believe the very fact that the Quorum Report, Austin American Statesman, CQ and one other (NYC—name escapes me) also ran stories as a result provides an unbiased confirmation that this announcement of a candidate challenging the incumbent on his poor record constitutes both newsworthy content and legitimate press function.

If the FEC would like for me to return the approximately *one dollar* that I received in remuneration for this article/announcement, I would be happy to repay Examiner.com this amount. However, I think the absurdity of the amount in question speaks to the nature of the equally absurd charges my opponent's supporter now brings against me. I imagine that the FEC, Mr. Cunningham and myself have *each* exceeded this amount in postage, not to mention the billable hours Mr. Cunningham put into researching and preparing his filing. I wonder if *those* were included as an "in-kind contribution" to his friend, my Congressman?

As I stated, the article published on Examiner.com was a copy of an email that was sent to Dallas County Republican Precinct Chairs. Mr. Cunningham points out that this article failed to include the customary disclaimers, stating something to the effect of, "Paid for by Friends of David Smith, Lucie Weaver, Treasurer." To which I would point out, again, that this article was treated as news, not a paid advertisement. "Paid" being defined as PAID, which was not the case. And again, I have established the newsworthy nature of the announcement, as supported by *four* other news services and numerous blogs picking up the announcement and reproducing the announcement that U.S. Rep. Pete Sessions had drawn a primary challenger. All that being said, the original email *did* include said disclaimer. The email being a *paid* communication, it was required to include said disclaimer. This article being *newsworthy*, it did not.

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Mr. Cunningham raises an interesting point since rendered entirely irrelevant regarding corporate contributions. As the Supreme Court recently removed stipulations pertaining to corporate contributions to Federal campaigns being illegal, assuming that Examiner.com *dld* compensate me for campaign activities, I believe this to be a moot point now. The fact that any compensation that I received (\$1) was for the dissemination of newsworthy content, established above, his point is doubly irrelevant.

Lastly, I should inform you that Mr. Cunningham refers to my opponent as, "My friend Pete Sessions." And while I recognize that *any* citizen is allowed to enter such complaints as Mr. Cunningham has entered against my campaign, the chummy nature of his relationship with my opponent demands a full accounting of his contributions to Rep. Sessions, both monetary contributions as well as this in-kind contribution of his time as an attorney.

I estimate that Mr. Cunningham, as a "former 17-year State Judge" (as he announced himself at our first meeting), enjoys a billable rate in excess of \$200 per hour. Further, I estimate that in preparing this complaint he would have been required to spend one hour poring through my articles, another hour analyzing them, another hour researching Federal Election laws, another hour considering the impact of these laws and my articles, and at least another hour preparing his communication. That is an amazing five hours and \$1,000 for the benefit of his "friend Pete Sessions." If \$1 is worthy of such a detailed accounting, I believe this in-kind expenditure to be worthy of an equal investigation on the part of the FEC.

Therefore, I request the FEC investigate U.S. Rep. Pete Sessions records to establish the monetary contributions of Mr. Vickers Cunningham to Rep. Sessions' campaign this election cycle as well as proof of Mr. Cunningham's efforts of an in-kind nature being documented by Sessions' campaign. I believe that there are limitations that may not be exceeded as to these contributions. Further, I request documentation be sought from Mr. Cunningham as to the time expended on his part assembling this complaint, as well as verifiable proof that *no* coaching, assistance, direction, guidance or materials were communicated, transmitted, disseminated or provided from either Rep. Sessions' campaign or Congressional office staff to Mr. Cunningham in the preparation of this complaint. Obviously, if these materials cannot be provided by Mr. Cunningham, or if it becomes obvious that Mr. Sessions' staff, either Congressional or Campaign, assisted in the preparation of or filing of this complaint against me, then we have far greater issues that this \$1 complaint against me to contend with.

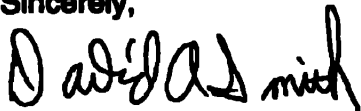
In closing, the laws of our nation are to be adhered to, I recognize. However, the alleged infraction, if in fact an infraction, that Mr. Cunningham brings to light pales in comparison to a sitting Congressman who has committed the ethical and fiscal infractions that are inherent in Rep. Pete Sessions' record. I think it is a sad, sad statement to our legal system when a Representative of the People neither adheres to these laws himself, nor publicly admits to his wrongdoings, and when challenged on his record, chooses to deflect criticisms over his *billion-dollar* missteps by bringing up points

of law pertaining to...one dollar. While the rule of law must be adhered to, even in this case, I ask the Commission to dismiss this matter on the following grounds:

- 1.) My article in question was treated not as a paid advertisement but as newsworthy content;
- 2.) My intent was not to skirt the laws, both statutory as well as case, but to make public an announcement exactly as I have done previously;
- 3.) The individual bringing accusations does not do so simply as a citizen but as a supporter of my opponent. Therefore, the matter of my candidacy does not warrant being decided before the Commission but in the upcoming primary election;
- 4.) The individual bringing accusations does so in support of a threat made by him against my candidacy, both current as well as future. Therefore this matter is not without bias nor is it worthy of the Commission's ongoing consideration;
- 5.) My opponent enjoys a nasty reputation of engaging in political games rather than answering to his own deplorable record. It is my belief that this is another example of the same. Again, allow the People to decide his fate in an election.

Thank you for your consideration, and I look forward to your reply.

Sincerely,



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